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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MARK AARON VAUGHN,

Defendant and Appellant.

E065167

(Super.Ct.No. CR32345)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed.

Eric S. Multhaupt, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Eric A. Swenson and Jennifer B. Truong, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant, Mark Aaron Vaughn, filed a petition for resentencing pursuant to Penal Code section 1170.18,¹ which the court denied. On appeal, defendant contends the court erred by denying his petition. We affirm.

I. PROCEDURAL HISTORY

On June 21, 1989, the People charged defendant with two counts of unlawfully driving or taking a vehicle (counts I & III; Veh. Code, § 10851) and two counts of receiving stolen property (counts II & IV; Pen. Code, § 496).² On June 22, 1989, defendant pled guilty to count II.³ The parties stipulated that the probation officer's report would provide the factual basis for the plea.

On August 7, 1989, as provided in the plea agreement, the court placed defendant on 24 months of probation. On the People's motion, the court dismissed the remaining counts. On August 7, 1990, defendant pled guilty in another case to receiving stolen property.⁴ Defendant additionally admitted that his conviction in that case qualified as a violation of his probation in the instant case. Pursuant to his plea agreement, the court sentenced defendant to 16 months' imprisonment concurrent to his term of incarceration in the other case.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² The stolen property in each charge was alleged to be a 1984 Chevrolet Camaro Z-28.

³ Defendant executed a waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754, as part of the plea.

⁴ The stolen property in that case consisted of a 1990 Chevrolet S-10 pickup.

On June 1, 2015, defendant filed a petition for resentencing in which he asserted he did not believe the value of the stolen property he was convicted of possessing exceeded \$950. In a response dated July 24, 2015, the People asserted a hearing should be set to determine the value of the stolen property. The court subsequently set a hearing in order to determine the value of the stolen property.

At the hearing on December 11, 2015, defendant's attorney submitted, after stating: "It's a [section] 496 [conviction] of a 1984 Chevy Camaro Z-28." The court found that the value of the property exceeded \$950 and denied defendant's petition.

II. DISCUSSION

Defendant contends the court violated his right to due process by denying his petition without taking any evidence or citing to a factual basis for finding a valuation of the stolen property. We disagree.

“On November 4, 2014, the voters enacted Proposition 47, “the Safe Neighborhoods and Schools Act” (hereafter Proposition 47), which went into effect the next day. [Citation.]’ [Citation.] Section 1170.18 ‘was enacted as part of Proposition 47.’ [Citation.]” (*T.W. v. Superior Court* (2015) 236 Cal.App.4th 646, 649, fn. 2.) Section 1170.18, subdivision (f), provides a mechanism by which a person who has completed his sentence for a felony offense may petition for reclassification of the offense as a misdemeanor in accordance with the offense statutes as added or amended by Proposition 47.

Any individual convicted of the theft of money, labor, or property which does not exceed \$950 may have his conviction reduced to a misdemeanor except when certain other factors exist. (§§ 1170.18, subd. (b), 490.2, subd. (a).) A petitioner bears the initial burden to establish eligibility for resentencing. (*People v. Johnson* (2016) 1 Cal.App.5th 953, 965.)

Here, defendant failed to present any evidence respecting the value of the stolen 1984 Chevrolet Camaro Z-28 he was convicted of possessing. Regardless of the court's finding of fact that the value of the vehicle exceeded \$950, defendant's failure to satisfy his burden of proving his eligibility for resentencing rendered any reclassification of his offense as a misdemeanor improper. Thus, the court acted correctly by denying defendant's petition.

III. DISPOSITION

The judgment is affirmed.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.